

Court of Appeals, State of Michigan

ORDER

Walter Kiesel v Reinhold Holz

Docket No. 278069

LC No. 2004-059260 CK

Henry William Saad
Presiding Judge

Mark J. Cavanagh

E. Thomas Fitzgerald
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), in lieu of granting leave to appeal, the Court REVERSES the Oakland Circuit Court's April 26, 2007 opinion and order granting the Holz defendants' motion in limine to preclude evidence or argument regarding a defect in the basement walls. Plaintiff presented documentary evidence of defects in the concrete basement walls in response to the prior motion for summary disposition. Investigative reports prepared by the engineering firm TEC showed defects in the basement walls caused by negligent construction techniques. This documentary evidence was appended to plaintiff's answer to defendant GFA's motion for summary disposition, and gave rise to genuine issues of material fact. Although this Court affirmed the circuit court's order that granted summary disposition in *Kiesel v Holz*, 272 Mich App 168; 725 NW2d 67 (2006), this Court's opinion did not address the circuit court's finding that plaintiff failed to present evidence in support of his defect claims. Because the issue was not decided by this Court, the law of the case doctrine does not bar the circuit court from recognizing and correcting the prior error. *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 522; 730 NW2d 481 (2007); *Prentice Family Foundation v Karmanos Cancer Inst*, 266 Mich App 39, 53; 698 NW2d 900 (2005).

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 15 2007

Date

Sandra Schultz Mengel
Chief Clerk